IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 7.1.2005

CORAM:

THE HONOURABLE MR. JUSTICE V.KANAGARAJ

W.P.NO.6407 OF 1997
and
W.P.No.2378 of 2004

In W.P.NO.6407/2004
K.R.Sethuraman ..Petitioner

vs

The Bharathiar University
represented by its Registrar
Coimbatore ..Respondent

In W.P.No.2378/2004

D.Sigamani ..Petitioner

vs.

Bharathiyar University
rep. by its Registrar
Coimbatore 641 046 ..Respondent

Writ Petition No.6407/1997 has been filed under Article 226 of the Constitution of India praying for the issue of a writ of Certiorarified Mandamus calling for the proceedings of the respondent made in letter No.Est/E.1/97 dated 11.4.97 and quash the same and consequently direct the respondent to continue the petitioner in service as Assistant Librarian till he attains the age of 60 years.

Writ Petition No.2378/2004 has been filed under Article 226 of the Constitution of India praying for the issue of a writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the respondent in his proceeding No.E3/9921/2003 dated 18.11.2003 and quash the same and direct the respondent to allow the petitioner to continue in service upto 60 years of age.

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For petitioner
in W.P.No.6407/1997 : Mr.A.Jinasenan

For petitioner
in W.P.No.2378/2004 : Mr.S.Mani

For respondent in both
the W.Ps. : Mr.C.Chinnasami
Senior Counsel
for M/s S.Haja Mohideen
Gisthi & E.Sampath Kumar

....

COMMON ORDER

Writ Petition No.6407/1997 is filed praying to issue a writ of Certiorarified Mandamus to call for the proceedings of the respondent made in Letter No.ESt/E.1/97 dated 11.4.97 and quash the same and consequently, direct the respondent to continue the petitioner in service as Assistant Librarian till he attains the age of 60 years.

2.Writ Petition No.2378/2004 is filed praying to issue a writ of Certiorarified Mandamus to call for the record pertaining to the order passed by the respondent in his Proceedings No.E3/9921/2003 dated 18.11.2003 and quash the same and direct the respondent to allow the petitioner to continue in service upto 60 years of age.

3.A glance had at the impugned order in W.P.No.6407/1997 dated 11.4.97 passed by the Bharathiar University, Coimbatore, the respondent herein, would read that,

> "Thiru K.R.Sethuraman, the Assistant Librarian is informed that his date of superannuation is 31.5.97 A.N. is instructed to furnish service details in prescribed format so as to enable the University to work out the pension and retirement benefits."

The above order impugned would indicate that the petitioner was to retire on 31.5.97 on attaining superannuation.

4.Today, when the W.P.No.6407/1997 was taken up for consideration, the learned counsel appearing on behalf of the petitioner would take the Court to Section 57 of the Bharathiar University Act wherein under Section 57(1) it is glaringly given as under:

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"57.Transfer of service of certain employees of the University of Madras to the university.-
(1) Every person who immediately before the notified date is serving in connection with the affairs of the University of Madras in the University Centre at Coimbatore shall as from the said date, become an employee of the Bharathiar University and shall cease to be an employee of the University of Madras."

The learned counsel for the petitioner would further point out that it is Section 57(3) which is relevant to the case and the same is extracted hereunder:

"(3)Every person referred to in sub-section (1) or sub-section (2) shall hold office under the Bharathiar University by the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension gratuity, if any, and other matters as he would have held the same on the notified date or the dates specified in the order under sub-section (2) as the case may be, as if this Act had not been passed.

5.So far as Section 57(1) is concerned, on the notified date persons who were serving in connection with the affairs of the University of Madras in the University Centre at Coimbatore shall as from that date onwards become an employee of the Bharathiar University and shall cease to be an employee of the University of Madras and the petitioner in the above manner has ceased to be an employee of the University of Madras. As per Section 57(3) every person referred to in sub-section (1) above shall hold office under the Bharathiar University by the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension, gratuity and other matters as he would have held the same on the notified date or the dates specified in the order under sub-section (2)as the case may be, as if this Act had not been passed. As per Section 57(4), the liability to pay pension and gratuity to the persons referred to in sub-sections (1) and (2) shall be liability of the Bharathiar University. Therefore, one has to trace the service conditions of the Madras University that was in existence at the time of coming into being of Section 57(3) of the Bharathiar University Act, 1981.

6.However, for the service condition that was prevailing on the date of notification so far as it was concerned with the Madras University so as to apply the norms to the petitioner, the petitioner is not in a position to show either from the Act or from the rules or in any manner so as to establish

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authenticatedly that the service conditions of the Madras University Act or rules permit him to continue to serve till the completion of age of 60 and therefore, only relying on the other materials the Writ Petition No.6407/1997 has to be decided.

7.On the part of the learned Senior Counsel on behalf of the respondent University, he would come forward to argue to the effect that the statute 9 of the Bharathiar University Service Statutes of the establishment under the Bharathiar University deals with the retirement wherein the age limit and the retirement of teaching and non-teaching staff are enumerated and since it is relevant for consideration, it is desirable to extract statute 9 of the Bharathiar University Service Statutes which runs as follows:

> "Statute 9:RETIREMENT
>
> Age of retirement-An employee of Classes A, B and C shall retire from the University Service on the last day of the month in which he/she completes his/her 58th year of age in respect of non-teaching staff and 60th year of age in respect of Teaching Staff.
>
> Provided that class D employees should retire on the last day of the month in which he/she completes his/her 60th year of age."

8.According to the above statute, the retirement age of non-teaching staff is 58 years of age and that of the teaching staff is 60 years of age. Since the petitioner falls under the category of non-teaching staff, his retirement age is 58 and therefore, the University authorities have rightly issued the impugned notice dated 11.4.97 to the petitioner to the effect that his date of superannuation was 31.5.97 A.N.further instructing him to furnish the service details in prescribed format so as to enable them to work out the pension and retirement benefits whereas the petitioner under false pretext that he is eligible to serve upto the end of 60th year of his age has filed the above writ petition without any basis for the same and by misrepresentation of facts has obtained an interim stay order passed by this Court and was able to continue in service till the completion of 60 years of age which is much against the statute of the University, that is, having served two years in excess than what he was eligible to serve and therefore, orders have to be passed in accordance with the service conditions and for the petitioner manipulating the facts and circumstances and obtaining an order of interim stay and with the help of the interim order dated 6.8.2002 was able to carry on for two years

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over and above the permissible limits under law and therefore, it cannot be said that the petitioner was authorised by law or by orders of this Court, much less, the above interim order to serve further and beyond the age of 58 and if it is to be construed that an interim order passed by any Court, much less this Court shall mean that till the said interim order is either vacated or lapsed and the writ petition being heard and disposed of finally, the petitioner should continue in service till date since the interim order also continuous, but it is not the case of the petitioner. The petitioner had retired on 31.5.99 on completion of 60th year of age and therefore, needless to mention that the petitioner has cunningly cheated the Court and respondent university and has enjoyed undue advantage of service for two more years than what he is entitled under law.

9.In so far as W.P.No.2378/2004 is concerned, the said Writ Petition is filed by one D.Sigamani, Assistant Librarian. He has made several representations dated 14.5.2003, 27.5.2003 and 6.10.2003 to the University to consider his case for continuance upto the age of 60 years. But, he was informed by order dated 18.11.2003 that the the post of Assistant Librarian is one falling under non-teaching staff and the retirement age for non-teaching staff is 58 years and therefore, he is not eligible to continue up to the age of 60 years. Challenging the same, W.P.No.2378/2004 is filed by him. By order dated 26.3.2004, the injunction petition, that is, W.P.M.P.No.6460/2004, filed by the petitioner herein has been allowed restraining the respondent from relieving the petitioner from the post of Assistant Librarian till he attains the age of 60 years i.e. 31.3.2006. Now, the petitioner herein is working after attaining the age of superannuation, that is, 58 years of age by virtue of the interim order. The petitioner had to retire on 31.3.2004. But, the petitioner is continuing still in service which is illegal. In view of the discussion held above, the petitioner is enjoying the continuance in service after attaining the age of 58 years which is not permissible under law.

10.Consequently, it has become necessary for this Court to make such orders for recovery of all the emoluments such as pay and other benefits enjoyed by the petitioners over and above the completion of 58th year of their age on attainment of which they should have retired on superannuation, that is, on 31.5.1997 in the case of petitioner in W.P.No.6407/1997 and on 31.3.2004 in the case of the petitioner in W.P.No.2378/2004 and hence the following order:

In result,

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(i)the W.P.No.6407/1997 is without merit and the same is dismissed. As such, the impugned order dated 11.4.97 is confirmed. The respondent is directed to recover all the salaries and other benefits enjoyed for two years by the petitioner herein from 31.5.97 on which date he attained the age of superannuation till 31.5.99 with immediate effect.

(ii)the W.P.No.2378/2004 is devoid of merit and the same is also dismissed. As such, the impugned order dated 18.11.2003 is confirmed. The respondent is directed to recover all such salaries paid and benefits enjoyed by the petitioner herein from 31.3.2004 the date on which he attained the age of superannuation till date with immediate effects further relieving him from service forthwith.

(iii) However, there will be no order as to costs in both the Writ petitions.

7.1.2005

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Registrar
Bharathiar University
Coimbatore-46

1 cc to Mr.A.Jenasenan, Advocate, CCSR.1275
1 cc to Mr.S.Mani, Advocate, CCSR.1524
2 ccs to Mr.S.Haja Mohideen Gisthi, Advocate, CCSR.1309,1310

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W.P.NO.6407/1997
& W.P.No.2378/2004

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